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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,968	01/24/2002	Joanna Hong Zhang	J6721(C)	3889
201	7590	11/03/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			KANTAMNENI, SHOBHA	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,968

Applicant(s)

ZHANG ET AL.

Examiner

Shobha Kantamneni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-12 are pending.

Applicant's Declaration Under Rule 132 demonstrating the unobvious nature of the present invention has been fully considered, but not persuasive.

The Applicant's arguments filed on 7/23/2004 to the rejection of claims made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive. The rejection under 35 USC 103 is **MAINTAINED**.

Double Patenting Rejection Maintained

The rejection of claims 1-12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 5, 8-9 of copending Application No. 10/056,923 is MAINTAINED for the reasons set forth in the Office Action mailed 04/21/04.

Applicant requests that, "this matter be deferred until an indication that the present claims would otherwise be allowable". However, this rejection is maintained.

Response to Arguments

Applicant provides a Declaration Under Rule 132 demonstrating the unobvious nature of the invention and argues unexpected results. Applicant compares storage stability of Samples 29A, 29B, 29C, 29D and argue's that a combination of a polysaccharide (xanthan gum) with a taurate polymer (Aristoflex AVC^R) Sample 29D of instant invention provided unexpected extended formula stability (survived for 3 months)

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and the other three samples 29A, 29B and 29C exhibited phase separation. This argument is not persuasive. Examiner respectfully points out that the prior art US 5,422,112 thickening system Sample 29C a polysaccharide (xanthum gum) with a polyacrylamide (Sepigel 305^R), survived 2 months storage stability which shows that it is only slightly inferior to Sample 29D. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Applicant argue's that "there would be no incentive to replace Seigel^R polyacrylamide with Aristoflex AVC polymers ". This argument is not persuasive. Aristoflex AVC^R is a polyacrylamide based copolymer. Thus it is obvious to substitute Sepigel^R a polyacrylamide polymer with another polyacrylamide based polymer Aristoflex AVC, in the thickening system for cosmetic compositions, because of the expectation of achieving an oil-in-water emulsion that has good stability against degradation by high shear and UVA light and that provides good skin feel, low degree of stickiness.

Applicant argue's "no matter how excellent a product may function on the skin, absent adequate storage stability other performance properties would be irrelevant. Infact, Beerse et al. provides no incentive or teaching that Aristoflex^R would show any benefit over sepigel^R...". This argument is not persuasive. As discussed in the previous Office Actions, given the benefits of these Aristoflex^R copolymers as taught by Loffler and given that it is known in the art (Beerse et al.) to combine these copolymer thickeners with xanthum gums and inorganic thickeners for use in cosmetic

compositions, there would be motivation to add these copolymers to the compositions of Williams or to substitute the copolymers for the polyacrylamides (sepiGel[®]) of Williams.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period, will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER